IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 732 OF 2005

Shri Suresh Hari @ Narhari Suryawanshi ... Appellant

V/s

Mubarak Babubhai Shaikh & ors. ... Respondents

Mrs. S.A. Mudbidri for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 23RD AUGUST, 2005

P.C.:

1. This appeal is preferred by the appellant against the judgment and order passed by the Addl. District Judge, Baramati by order dated 31.1.2002 allowing the appeal and dismissing the plaintiff's suit being R.C.S. No. 142 of 1992 decreed by the Civil Judge, Jr.Divn., Indapur, by order dated 20.7.1999.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The appellant-plaintiff filed the suit for declaration and possession of the suit property on the

ground that the plaintiff owned the suit property bearing House No.64 and it was his ancestral property and defendants had acquired part of the property illegaly and had made construction thereon and hence the suit for declaration and injunction came to be filed.

4. The plaintiff came with the case that he is owner and possessor of the suit property which is his ancestral property and his name was recorded in the concerned record of the Grampanchayat and he was paying assessment to the concerned authority. According to him, after the death of his father, the suit property was not of the use for about 2-3 years. According to the plaintiff, the defendants raised construction of one room each in southern side of the suit property illegaly without his consent. The defendants started asserting their right over the suit property assuming that it is the property of the Government and in fact the defendants have no right over the suit property whatsoever and hence the suit came to be filed.

Defendants contested the suit inter-alia submitting that the allegations made by the plaintiff are not correct and suit deserves to be dismissed.

5. It was the case of the defendants that the allegation that the plaintiff was owner and possessor of the suit property is false and they also denied that they had no concern with the suit property. It is their case that plaintiff was having house room bearing No. 64 and they are having house property bearing No. 64/1 in the area of the said village and in the year 1979-80, Government had allotted residential house to poor and needy persons and accordingly one Govind Dhondi Pawar was allotted the house property bearing No.64/1 and said Govind Dhondi Pawar left the said house and hence the Government allotted that house to the defendants and, therefore, they have raised construction of two rooms on oral permission given by Grampanchayat to them in the year 1991-92 and hence it was their case that plaintiff had no concern or right with their property and sought dismissal of the suit.

6. The learned Trial Court adjudicated the dispute on merits and concluded that the plaintiff had proved his ownership title to the suit property and defendants have illegaly raised two rooms on the suit property and hence the plaintiff was held entitled for possession and declaration of ownership title and decreed the suit.

The appeal was carried to the District Court, Baramati. The learned Addl. District Judge, after hearing both parties and on the basis of available evidence came to the conclusion that the plaintiff had failed to prove his case and, as such, the suit came to be dismissed allowing the appeal. Hence the present appeal.

7. At the outset, it may be noted that, there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that the appreciation of evidence made by the lower appellate Court was not proper and, therefore, interference by this Court was called for. However, on perusal of the reasonings adopted by the lower appellate Court, it is found that he has rightly appreciated the entire evidence on record in order to hold that the plaintiff has not proved his case. There was absolutely no evidence on record to show thed title of the plaintiff to the suit property especially when he came with the case that it was his ancestral property. The lower appellate Court has also come to the conclusion that the defendants also failed to establish their defence to the effect that the construction made on the said property belonged to them. It was submitted by the appellant that since the defendants had failed to

establish their defence, it must be held that the plaintiff has proved his case. I prefer to disagree with this proposition. The plaintiff has to stand on his own legs in order to prove ownership title to the suit property as alleged and since he has no evidence to that effect, he must fail and lower appellate Court has rightly observed that the plaintiff’s case must fail for want of sufficient evidence.

8. In view of this aspect, I do not intend to interfere with the order of the lower appellate Court which is last Court of fact when it is seen that factual aspects of the evidence are properly appreciated and findings are recorded in proper and legal manner.

In the result, the appeal stands dismissed with no order as to costs.

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